Supreme Court, U.S.
FILED

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No._____

In The
SUPREME COURT of the UNITED STATES
October Term, 1997

Alfonza Darnell

v.

First Federal of Alabama and et.al.

On Petition For A Writ of Certiorari
To The Supreme Court Of Alabama

PETITION FOR A WRIT OF CERTIORARI

Alfonza Darnell
[C]oerced Pro Se Litigant
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Pro Se Petitioner

47 pp

QUESTIONS

Whether Petitioner's Constitutional Rights to a Fair Trial and Rights to Equal Protection of the Law was violated when Trial Judge dismissed his Attorney, Knowingly condoned Perjuries, Fraud on the Court, Conversions, Conspiracies, etc. and ignored irrevocable pertinent material evidence in his favor.

as contrued with

Whether Summary Judgment was proper when Alabama Judiciary at their whim, turns on and off Valid Alabama Code Laws and Appellate & Supreme Court Precedent case laws to protect the Sanctity of:

(1) White White Collar pride and money
(2) Legal Profession
(3) Racism

Whether a Bank can Re-open a Real Estate Loan after it has been Paid In Full from a Wrongful Foreclosure and Auction Sale on the Courthouse steps with impunity?

(Savings & Loan Association changed to Bank)
Whether Federal Deposit Insurance Corporation (FDIC), can deny Rehearing complaint because Office of Thrift Supervision handled the complaint adversely because they were defrauded by the Bank?

Whether Attorney/Firm shall lose their immunity of lawsuit and whether both Attorney and Client shall lose their rights to be as ONE where there isn't a Reasonable Doubt whatsoever that the Client's Attorney aided in Creating Fabricated Evidence and committed Wilful Fraud on the Court?

PARTIES TO THE PROCEEDING

The Petitioner, Alfonza Darnell is currently a resident of Huntsville, Madison County, Alabama. Petitioner was the Appellant before the Supreme Court of Alabama; the Appellant before the Alabama Court of Appeals; and the Plaintiff before the Circuit Court Judge, in Jasper, Walker County, Alabama.

Respondent, First Federal of Alabama, is a Alabama Corporation licensed to do business in Alabama. It's officers, Chairman of the Board, Al Simmons; President, Robert Nolen, Jr.; Senior Vice-President Mary Jo (Bame) Gunter; Vice President Carmen Sparks; it's past officers, Retired Senior Vice President Vernon Shaw and Ex Senior Vice President Palmer Bell; and it's Attorneys: Brent Thornley and Law firm Maddox, MacLaurin, Nicholson & Thornley; Edward R. Jackson and Law Firm Tweedy, Jackson & Beech. Inherently Richard Jones, Petitioner's Attorney, whom was allowed to withdraw - provided the outcome of this litigation being in favor of Petitioner.

There are no other parties to this action. However, since Fraud on the Court and Perjuries are involved and the Temporary Repudiation of Alabama Laws, Sections 8-9-1 & 2; 35-4-50, 51, 62 and 63 is drawn into question ...these acts as well as others are of such nature that the Attorney General for the State of Alabama has been duly served and notified of this proceeding.

TABLE OF CONTENTS

Page

Topic

Questions Presented for Review i

Parties to the Proceeding ii

Table of Contents iii

Table of Cases and Authorities iv

Opinions Below 1

Basis for Jurisdiction 1

Constitutional Provisions Involved 1

State Statutory Provisions Involved ..... App. 7

Federal Statutory Provisions Involved .....App. 8

Statement of the case 3

Reasons for Granting Writ 4

Conclusion 30

Appendix ..... App. 1

Keys to Understanding this Writ App.11

TABLE OF CASES AND AUTHORITIES

Akins v. Randolph County Board of Education
643 So. 2d 995 (Ala. Civ. App. 1994) 22

Arndt, Inc v. City of Birmingham
547 So. 2d 397 (Ala. 1989) 23

Charnock v. Dieleman
421 So.2d 758 (1982, Fla. App. D4) 13, 21

Cooper v Cooper
144 So. 2d 62 (1962) 10, 22

Copeland's Enterprises v. CNV, Inc.
925 F.2d 1084 (11th Circuit 1991) 22

Devlin v. Ingrum and International Integrated Systems, Inc.
928 F. 2d 1084(11th Cir. 1991) 12

Firemen's Ins. Co. of Newark v. Pugh
686 So.2d 281 (Ala. Civ. App. 1996) 10

Gilmore v. Shell Oil Co.
613 So.2d 1272 (Ala. 1993) 23

Gray v. Reynolds
514 So. 2d 973(Ala. 1987) 22

Hinkle v.Railway Express Agency
6 So.2d 417 242 Ala. 374 (1942) 30

Hose v. Winn Dixie Montgomery, Inc.
658 So. 2d 403 (Ala. 1995) 23

O'Barr v. Oberlander
679 So. 2d 261(Ala.Civ.App. 1996) 23

Oden v. Pepsi Cola Bottling Co.
621 So.2d 552 (Ala. 1994) 30

Trauner v. Lowry
369 So.2d 531 (Ala. 1976) 8

Western States Grocery v. Mirt
123 P .2d 266 9

17 Am. Jur. 2d (Contract Sections) 218 & 520 23

STATUES Federal & State

12 USC Section 1461 et seq. 17, 20
28 USC Section 1257 1

28 USC Sections 2201 & 2202 should be invoked
because of the diverse nature of this case, maybe an
creation of a remedy and Further relief could be necessary v

42 USC Section 1981 .....14, 17, 19, 21
42 USC Section 1983 .....14, 17, 19, 27
42 USC Section 1985 .....14, 17, 19, 27
42 USC Section 1986 .....14, 17, 19, 27
Alabama Code Section 8-9-2 .....10, 11, 23
Alabama Code Sections 35-4-50, 51, 62 & 63 .....10, 11, 23
Professional Responsibility Code for Attys....DR 7-101 & 102

OPINIONS BELOW

The order of dismissal of the Alabama Supreme Court that gives rise to this petition is Alfonza Darnell v. First Federal of Alabama, et al., Case No. 1970117, dated January 16, 1998. The Rehearing Overruled on October 3, 1997 and Affirmation August 29, 1997 by the Alabama Court of Civil Appeals, Case No. 2960713. These unpublished decisions and the unpublished order January 6, 1997 of the Walker County Circuit Court, Case No. 95-342 are reprinted hereto in the Appendix at pages App. 1 - App. 5.

BASIS FOR JURISDICTION

The Supreme Court of Alabama denied review of this matter on January 16, 1998. This court has jurisdiction to review a decision of a state court of last resort pursuant to 28 United States Code Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment 5	**Due Process of Law**
Amendment 6	**Rights to a fair trial**
Amendment 7	**Rights in civil cases**
Amendment 9	**Rights retained by the People**
Amendment 14	**Civil Rights**

STATUTORY PROVISIONS INVOLVED

6 Alabama Codes

1. (Statue of Frauds) **"Section 8-9-2. Certain agreements void unless in writing.**

2. **"Section 35-4-50. Conveyances required to be recorded in office of probate judge.**

3. **"Section 35-4-51. What instruments admitted to record; filing as notice of contents; section cumulative**

4. **Section 35-4-62. Conveyances recorded in county where property situated.**

5. **Section 35-4-63. Recording effective as notice of contents of conveyance.** 4

6. **Attorneys Code for Professional Responsibility. Representing a Client Within the Bounds of the Law. Disciplinary Rule 7-102 (Pertinent Parts)**

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1. **12 USCS Section 1461. Home Owner's Loan Act of 1933**

2. **42 USC Section 1981. Equal Rights Under the Law**

3. **42 USC Section 1983. Civil action for deprivation of rights**

4. **42 USC Section 1985. Conspiracy to interfere with civil rights (1) ... (2) Obstructing justice; ..... (3) Depriving persons of rights and privileges**

5. **42 USCS Section 1986. Action for neglect to prevent**

STATEMENT OF THE CASE

The Petitioner, Alfonza Darnell had three houses which went through Foreclosure Proceedings, each being bought at Foreclosure Sale (they were paid off as of 6/20/89; wherein two out of the three loans were not in any default of payments which were alleged by Respondents, orally, by letters and by newspaper advertisements. Petitioner kept one house because he directly that he was not in any default, but his fear of First Federal's Pride, Racism and Power he blotted out those facts and began paying on that one loan; thus, Respondents sold the two houses left, including the personal home.

Petitioner prematurely filed case in the Federal Court claiming only Racial Discrimination and Violation of the Homeowner's Loan Act of 1933. The Court dismissed the case without prejudice.

Subsequently, but within the Statues of Limitations, Petitioner realized that he had been defrauded. I went to First Federal several times and each time I was told to see their Attorney Thornley, so I did. The Attorney wrote such an insidious letter, laced in what I knew and he knew to be fabrications and misrepresentations. Their stance dictated me to sue both Attorney and First Federal alleging at least twenty two legal complaints via the Circuit Court. The Court ruled against me January 6, 1997 in all counts which were palpably wrong; however, both Alabama Court of Civil Appeals on August 29,1997 affirmed (Rehearing affirmed October 3, 1997) and Supreme Court affirmed January 16, 1998 without an opinion.

The Circuit Judge ironically, carried on beneath that allowed in his oath as did First Federal's Attorney, that is he falsehooded about having read my pleadings; after getting a lawyer, he scheduled a hearing without informing my lawyer; carried on about Respondent Attorney's dad; allowed several interruptions where John Q. (Public) and othet Attorneys walking in; and whenever I had my momentum going, he interfered; changed Court

Reporters after Hearing and then reneged when it was crystal clear that Motion filed was to also be entered into the records as being be my argument since he could not afford the time; plus he refused to apply Ala. Code Section 8-9-2 nor to Recuse himself, while at the very same time was well aware that First Federal's Attorney Jackson had represented them in a Class Action Suit. (pg____)

REASONS FOR GRANTING WRIT

Some of the issues involved in this Petition is for all intent and purposes, matters of both first impression and of such diverse nature centering around the legal system itself and racism which up until this present date have not been properly disposed of by any court. The truth of whether a Black really have the same rights under the Constitution as Whites and addressing the Racism in Federal Lending Regulatory entities and in our Judiciary and Legal System and the rendering of this Court's Supervisory Powers when the Alabama Court of last resort sanctions the temporary abandonment of its laws by the lower Courts. Some of the issues facing our country are almost ageless and requires the guidance of this Honorable U.S. Supreme Court in dealing with the woes of Racism.

This suit is so diversified, the only way I knew, not being a lawyer to go at it, was in the unorthrodox manner in which I did. If the Court would remember I was forced to represent myself, which should be an insult to the Legal Profession in that I did not want to. [I went to at least fifty lawyers and when I did get a contract with Atty. Richard Jones (I orally agreed to allow him to withdraw suit against Atty. Thornley and his firm) the Judge granted a withdrawal motion the very next day after it was filed without a valid cause] My Atty. too violated the Code of Professional Responsibility.

Pertinent Excerpted Material Information from Foreclosure Deed

Atty. Thornley's call to Petitioner after Foreclosure Sale without a doubt, **Irrevocably inferred** each of three loans were Paid-in-Full.

FORECLOSURE DEED

THAT WHEREAS, heretofore on to wit: the 16th day of June, 1977, Alfonza Darnell and wife, Carlen Darnell; and Shelby Darnell and wife Ghema Darnell executed a certain mortgage ....., which said mortgage is recorded in Mtg. Book 1106, at Page 12...

.....

WHEREAS, default was made in the payment of the indebtedness secured by said mortgage and the said First Federal.....did declare all of the indebtedness secured by said mortgage subject to foreclosure as therein provided.....

NOW, THEREFORE in consideration of the premises and a credit in the amount of $ 24,357.33 ,on the indebtedness secured by said mortgage, the said First Federal of Alabama, F.S.B. (formerly First Federal Savings & Loan Association of Jasper), by and through Brent Thornley as Auctioneer conducting said sale, do hereby grant, bargain, sell and convey unto the said First Federal of Alabama, F.S.B. the following described property situated in the County of Walker, State of Alabama, to-wit: .....

.....

By: Brent Thornley (sign/seal) As Auctioneer and Attorney-in-Fact
By: Brent Thornley (" ") As Auctioneer Conducting Said Sale.
Given under my hand and official seal, this 20th day of June, 1989.
NOTARY PUBLIC Shirley W. Peck (sign/seal)

State - Alabama-Walker-Co.; I certify this Instrument was filed 89 JUN 20 PM 3:36; Recorded-Book and Page Shown above (Vol. 1331 Pg. 612) Stanley Wade - Judge of Probate

This Foreclosure Deed substantiates the fact that Petitioner's Loan #99864-9 was Paid-Off at 3:36 PM before the close of business 6/20/89; Mtg. Book 1106 at Pg. 12 clearly state the mtg. amount to

be $36,075.00; Atty. Thornley clearly stated First Federal Foreclosed based on $30,875.00 beyond doubt proves a wrongful foreclosure. Had FF foreclosed on an amount different than that showing in the Mortgage, then that figure or document should have been so advertised (Everyone and his Uncle would have noticed and questioned that); but, now the newspaper declared that FF was foreclosing based on Mtg. Recorded in Vol 1106 at Page 12 is a Fraud/Misrepresentation, (Atty. Thornley represented the same in his Foreclosure Deed) because, it is not the truth. The truth of the matter is FF made an wrongful foreclosure and their Pride, Power (money & political) and Racism would not allow the Public to know that a Black Man whom they were trying to hurt, ended up with two of three of his properties alleged to be in Default of Payments (they were not in any default) without having to pay First Federal another dime, on Loans # 99864-9 and #1985 because FF went too far with its Foreclosure Procedures. The fact that a Mtg. Deed on loan #1985 does not appear in the records gives a Vehement Cry of Tampering with the Probate Records. How can they get around Attorney Thornley's letter to me, which supports his statement to me after the foreclosure sale, " Alfonza, First Federal purchased each of your properties for the amount they claimed you owed them." *Atty. Thornley's statement to Petitioner has not been Mentioned by Respondents since it's inception; but, the letter by Atty. Thornley was Monstrously Used in the Respondents (alleged) Perjured Affidavits; However, this Petitioner has quoted that statement as an fact of this case (though it was not accepted by the court) which has never been denied and the letter statements as Misrepresentations and when some of the misrepresented contents of the letter found its way to the Respondents Affidavits, this Petitioner rightfully called it wilful Perjuries, with supporting evidences which is a part of the Clerk's Record.* Remembering Cooper's (pg) case, the reality start of the prior sentence should be, "First Federal's statement and letter to Petitioner".

In [A]labama three different Tribunals preferred unsubstantiated Circumstantial Conclusory and Self Serving Allegations (accepted as evidence) from Known Perjured Affidavits when the evidence by Petitioner is and was as formidable as the Rock of Gibraltar, direct and substantiated evidence (though not accepted by Court). Mostly all of the evidences originally submitted were substantiated 3/7/96 with affidavits/certifications by Rick Allison/Probate Judge; Doug Pearson, Publisher, The Daily Mountain Eagle; Larry Jones, General Mgr. of the Huntsville Credit Bureau and the Petitioner. Construing the fact that each of Petitioner's Loans were advertized to be sold at Auction that very same day substantiates that the three loans Petitioner had with First Federal were Paid-Off-In-Full within minutes of each other. **Now Construe with these facts**.

(1) First Federal sent Petitioner three Pay-Off Letters dated 6/28/89 signed by Sabrina K. Barton stating how much money it would take to Redeem each of the three properties as of 6/30/89. (bought at Auction, 6/20/89)

(2) (a) Loan # 944 was in default of payments when it was rightfully foreclosed. When FF sold it 3/19/90 after buying it 6/20/89, FF placed on it's Statutory Warranty Deed that the property were "Subject to Statutory rights of redemption";

(b) Now, when FF alleged Loan # 99864-9 were in default of payments but it were not in any default, FF Wrongfully Foreclosed, Foreclosed, bought it at auction and Converted Petitioner's property, later sold it on 6/29/90, FF placed on the Warranty Deed, the following, " Property subject to Right of Redemption" when the property was over a year old since it was purchased at auction. That notation should had been placed on Deed only if foreclosure was wrongful; thus it was and First Federal was fully aware of fact. FF subsidiary First General Services Corporation prepared the deeds mentioned in (a) & (b). FF's Pride, Power & Racism

allowed such an atrocious act, which is a part of ALABAMA'S Reputation.

Effect of a Right of Foreclosure: A mortgage foreclosure extinguishes the debt to the extent of the purchase price bid at the foreclosure sale and the equity of redemption under the mortgage and substitutes the statutory right of redemption. *Trauner v. Lowry* 369 So.2d 531 (Ala. 1976) Respondents most definitely fixed that Warranty Deed wherein it could get it back [i]f necessary. It did become necessary but again Pride, Power & Racism prohibited First Federal from, "doing the right Thing."

(3) Thornley's letter, C 48-49 at Loan #1985, excerpted part, "The only charges, other than interest, which appear on this account, are charges which were incident to foreclosure proceedings in 1989, of which foreclosure was [s]ubsequently cancelled." (This had to be after 6/20/89 which is far too late)

(4) "As far as the other account on your homeplace is concerned, I reviewed this file as well. As I understand it, your position is that $5,200.00 was paid on the loan at closing and should have been credited as a prepayment."

(a) Pure Fabrication, the prepayment was on 6/28/77. Note, both Retired Senior V.P. Shaw and current Sr.V.P. Gunter each stated in their affidavits that, Gunter's #21 aff. statement, C 240 " First Federal has never to my knowledge, loaned monies to its customers to allow said customer to prepay a loan on the day the loan was made." Ret. Sr. VP Shaw's # 16 aff. statement, (C 246)" The Bank has never to my knowledge, loaned prepayment monies to its customers in order that they may prepay a loan on the day the loan is made. "Sr. V.P. Shaw was the sole custodian of the LEA, which states, "Balance credited to Account 6/28/77 $5,200.00 (C 21)". THIS WITHOUT A DOUBT PROVES WILLFUL PERJURY BY SHAW; BECAUSE, IT WAS HE AND HE ALONE WHO CAUSED PETITONER'S ACCOUNT TO BE CREDITED ON 6/28/77 AND NOT ON 6/16/7 DAY OF

THE LOAN AS STATED IN SHAW'S & GUNTER'S AFFIDAVITS, PLUS THEIR ATTY. BRENT THORNLEY'S LETTER DATED 9/14/94.
THESE FACTS ARE FURTHER CORROBORATED BY THE LOAN (#99864-9 at C52) HISTORY.

The Petitioner went to Shaw's office 6/28/77 to get the balance of his loan, we argued and during that time span, Shaw stated that, "First Federal is not going to give you the rest of that money; because, you might start building another house." C314 *This contradicts Ret. V.P.Shaw's quote about paying off 1st & 2nd mortgages & Atty. Thornley's C 48-49.* The Petitioner attempted to use that quote as well as these quotes following, by Shaw in Federal Court in 1989 to Prove Racial Discrimination..
"Hezzie & Annie Morgan did not: (a) make application at FF; (b) give any references for credit at FF; (c) have to tell where nor if they worked to FF". *Shaw Contradicts (a-c) himself with his acts revealed at C 70, a loan committment to the Morgans' signed by Sr. V.P. Shaw.* "I will not show you any transfer papers" *You can't show what you don't have nor never had.*

(5) "At the Closing, you stated that you did not want to cause another mortgage to be against your parent-' property. Because of this, the bank was not willing to loan you the original amount for which you applied, of $36,075.00, and in fact lowered the loan to you to the amount which you actually borrowed, of $30,875.00." This is obviously not true, (see C 23) if it had been the bank would have changed each of those figures prior to my family signatures; but, even stronger is the fact my parents did mortgage their house and that is the reason that loan was for $36,075.00. The Insidious letter being quoted from, (at C 48-48) dictates grounds for *Western States Grocery Co. v. Mirt.* 123 P.2d 266 at 267, "Proof of an attempt to falsify evidence, if knowledge of the fabrication by the party making such attempt is proved, is admissable as an admission by such party of the weakness of his case." Also each of

the other proven inconsistencies within this writ and pleadings.

(6) "The fact that the note reflects a $36,075.00 note amount is simply a typographical error. It should have been $30,875.00, At the time of acceleration and foreclosure, you were delinquent in your payments [b]ased on the $30,875.00 loan which was made. The loan was in fact foreclosed." Ala. Code Sections 8-9-2 & 35-4-50, 51, 62 & 63 prohibits the above. In *Firemen's Ins. Co. of Newark v. Pugh* 686 So.2d 281 (Ala. Civ. App. 1996) & Cooper's case, it was stated, "Omissions and commissions of attorney are regarded as acts of client."

Excerpted Affidavit Statements via F F's Sr. V.P. Gunter
(a) "2. Loan A, 9864, was entered and executed on the 16th day of June, 1977, in the amount of $30,875.00." (Ala. Laws Demand that this be in writing, it's Not Optional)

(1) Sr. V. P. Gunter's Attestation to the Federal Reserve Regulation Z, C27 form showing that Darnell on 6/16/77 borrowed $36,075.00; thus, Proves Perjuries alleged. **OTHER Proofs**: Senior V.P. Vernon Shaw's notations on First Federal's Loan Expense Account Sheet, C 21; Mortgage Note, C 22; Mortgage Deed, C 23 ; Schedule of Attorney Fees C 33 ; Loan History, C 52-57; The letter dated 9/14/94 fully approved by First Federal's Chairman of the Board and Sr. V. P. Gunter sent to me by F F's Atty. Brent Thornley C 48-49; Alabama Code Section 8-9-2; Alabama Code Section 35-4-50, 51, 62 & 63 .

(b) "15. On June 6, 1978, Hezzie Morgan and Annie Morgan assumed loan number 1985 without any changes to the amount of payments. Darnell subsequently reassumed loan #1985." C 180-81

(1) Sr. V.P. Gunter Notarized Darnell's Second Mortgage to the Morgans on June 6, 1978 which clearly states that their payments would be $214.00 monthly which in itself proves another alleged

perjury by First Federal via Sr.V.P. Gunter. OTHER Proof(s): First Federal failed to show anything in writing which substantiates that the statement in (b) above must succumb to the Statue of Frauds Section "8-9-2" of the Alabama Code; and to the Cumulative Ala. Code Sections 35-4-50, 51, 62 & 63.

Retired Sr.V.P. Shaw's affidavit statements Proves Perjuries & Violations of 42 USC Sections 1985, 1981 & 1983 in (a) thru (f)

(a) " 5. In order to borrow $36,075.00, Mr. Darnell would had to have put his property up as a first mortgage and his mother and father's property up as a first mortgage." *Shaw's statement above contradicts this and my mother's affidavit at C 452.* (btm of pg 10)

(b) "6. In order to to borrow $30,875.00, Mr. Darnell would have given a 1st mtg. on his property & a 3rd mtg. on his parents property." *That simply was not the case, the amount was $36,075.00 and further corroboration of this is the instructions on the LEA to Closing Atty. which was written prior to our signatures. NOTE! Carefully how much Sr.V.P. Shaw wrote on that sheet after it was signed, 6/16/77 which should be criminal.* Sr. V.P. Shaw was the custodian of the LEA which beyond any shadow of doubts contradicts the material portions of his affidavit.

(c) "7. We prepared the documents for the loan based on the highest loan amount, without knowing whether Mr. Darnell was going to borrow $28,000.00, $30,875.00, or $36,075.00. The loan that was actually made and identified as loan number 9864, was in the amount of $30,875.00 [R]egardless of what the note and mortgage reflected" *That is not business talk based on (1990's) Equality but business talk relative to (1860's)Racism.*

(d) "9. At that time, it was the custom and practice of the Bank to

prepare all the loan documents and send them to a closing attorney who would then close the loan. This was done. An assumption was made that Mr. Darnell would be borrowing $36,075.00 and paying off the mortgage on his mother and father's property." *If that was the case and enough money was there FF would have simply paid off those loans; but, because we had never discussed that, they could not do it without Petitioner noticing it. Reiterating the Courts not only overlooked my word but also my mother's (aff.), giving leave way to see Racist Acts by FF and the Ala. Courts.*

Also in Devlin v. Ingrum and International Integrated Systems, Inc. 928 F.2d 1084 (11th Cir. 1991) It was stated, " Under Alabama Contract law, intention of parties at time of making contract controls, not subsequent perceptions." The subsequent perceptions the Defendants are presenting are not even logical. First Federal's perceptions was clearly shown in the Note, Mortgage and Loan History (loan 9864); Darnell went to First Federal 6/28/77 for the balance of his money which proves he intended to borrow $36,075.00 which fulfill the criteria laid out in the Devlin case above. (11th Circuit 1991)

(e)"15. No reduction in the principal amount due from Mr. Darnell was ever made by the Bank, except upon payments by Mr. Darnell to the Bank."*The LEA, C 21 and Loan History, C 52 proves point.*

(f) "18. The note did in fact contain a prepayment provision. However, the prepayment provision was 'crossed' out." *One look at C 22 Proves otherwise.* (Only bad portion for Petitioner was X'ed)

Ret. Sr. V.P. Shaw gave rise to 42USC Sections 1985 and 1986 when he severed his employment with First Federal, making them two instead of one. The Fact that Attorney Jackson Notarized Ret. Sr.V.P. Shaw's affidavit, places Petitioner on notice that: (a) It was personal & off the record brainstorming; (b) That it went be - yond regular business hours; (c) That it gives the appearance of

Subornation of Perjury in that I did not tell Shaw that I had sued FF and there's No One else left but the Respondents , their Attorney(s) or Judge. (d) That it, at least gives the appearance of impropriety; (e) That Ret. Sr. V.P. Shaw is a ***busybody*** or ***was suborned***.

Affidavit of First Federal Vice President Carmen Sparks

(a) " 3. Mr. Darnell began missing payments in 1983. The loan became delinquent in July 1991 and was reported delinquent some time thereafter. The Bank does not retain records to reflect this however." *Then why did FF go through an entire foreclosure procedure; including, buying this property plus two more on 6/20/89 strictly for default in payments on Courthouse steps.*

(1) The **Loan**(#1985) **H**istory (C385-92) shows a balance of $10,431.96 and the **A**mortization (C78-82) shows a balance of $11,338.45 as of 7/1/91 construed with prepayment clause (C 34) in note and **similarly used**, it absolutely denies the validity of each affidavit statement in #3 above when construed with amortization schedule. **As of** 6/20/89 date of foreclosure sale, (similarly used) LH bal. = $12,544.26 v. $13,662.40 = A bal. The Blessed pre-payment clause, (fashioned exactly like the one in Petitioner's first loan, #99864-9) in note prohibited any default and thwarted FF's takeover from its wrongful foreclosure purchase, 6/20/89. It also, should have eliminated the Court's Ruling which is tantamount to stating Petitioner's Blessed prepayment clause is: (a) valid in the second loan (#1985) but invalid in the first loan in which it was fashioned; (b) prohibited by Charnock v. Dieleman case Ruling, "3. Mortgages Key 298(1) prepayment provision of promissory note was not designed to permit mortgagor to avoid obligation to make periodic payments until obligation was paid in full." The Blessed prepayment clause in loans #99864-9 and #1985 do not allow mortgagor to avoid periodic payments until loan is paid in full (in a lump sum); Respectively, each clause does allow mortgagor after an hefty prepayment has been made to avoid

payment altogether and/or to pay a different amount than was first specified so long as mortgagor does not allow his loan balance to exceed the amount showing on the amortization schedule had he paid as first specified; while, at the same time, month to month interest is being added back to the loan balance. Our Alabama Courts have thus far, turned off Petitioner's clause in loan #99864-9 and turned it back on (also parallels how the Courts turned on & off their precedent case laws relative to this Black Petitioner) for the very same clause on the very same day for loan #1985; wherein the Higher Courts parallels their No Opinion(s) but Affirmation(s) of the Circuit Court's Summary Judgment Decision. This centers, the crux of the Courts and Respondents Violations of Petitioner's Constitutional Rights afforded him via the 1st, 5th, 6th, 7th, 9th & 14th Amendments as construed with other Federal Statues which are relative to his point, that is [p]rimarily 42USC Sections 1981, 1983 and 1985 as printed on pages 5, 6 & 7 this writ. Ironically, and Most Seriously, the Court is supposedly there to dispense what is Just but they have thus far enjoined the Respondents and/or done the opposite expected of them. More specifically, this **Petitioner's rights to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by White citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exaction of every kind, and to no other,** have been Wrongfully Deprived. Alabama Courts have taken the Awesome Audacity to Ruled as if First Federal's Acts of: foreclosure auction, advertisements in newspaper and purchases at foreclosure sale by FF were not breach of contract, conversion nor libel when there were no default of payments by Petitioner.

EMPLOYMENT AGREEMENT (verbatim, exceptions noted) The undersigned, Alfonza Darnell , employs ([in essence]) [Richard Jones and his Associates, Attorneys at Law to recover by

suit or settlement a claim for damages by reason of an injury suffered on or about .....] and agrees to pay said attorneys for their services a sum equal to 40% of the total recovery so obtained. It is understood that the expenses necessarily incurred by said attorneys in the investigation, preparation, and litigation of this claim and the cost of the interest incurred in the financing of said expenses will be deducted from the total amount recovered before any funds are distributed between the client and the attorneys. No additional fee will be charges for legal services in the Supreme Court or Court of Appeals, other than any interest and penalty or affirmance fee which such court may require the Defendant to pay Said attorneys agree to charge nothing for their services if nothing is received or recovered. Signed this 23rd day of May, 1996.

MOTION TO WITHDRAW Filed 10/28/96 Granted 10/29/96
Comes now the undersigned attorney at law ..... 1. After a diligent investigation of the facts of this case, after consulting with experts, and after research of applicable law, the undersigned attorney at law has reached the conclusion his (he) is unable to continue as legal representative of the plaintiff in this action. ..... Richard Jones (The Judge hassled Petitioner about getting a lawyer, Petitioner gets one, lawyer motions to continue 6/27/96 - granted 6/28, next lawyer motions to withdraw, 10/28/96 granted 10/29/97. Then each Court whips Petitioner because he is not an lawyer; though, neither court would answer whether the points made/attempted by me would have won my case had they been presented properly. Petitioner, literally had no time to respond to his lawyer withdrawal; thus, he have not had a Fair Trial. **Circuit Court** violated my Const. Right to enter/enforce contract, letter from B'ham Bar Assoc. stated 99.9% or 2 out of 2,000 may sue another lawyer, considering the fact that all lawyers are fetal Judges and that 5% become Judges leaves how much room for one to get an impartial Judge when suit involves a lawyer and his firm.

(Verbatimly Printed exception [abbreviation or skip...])

IN THE CIRCUIT COURT FOR WALKER COUNTY ALA.

J. Alan Brown, Plaintiff *

v. * Civil Action No: CV 91-724

First General Services *

Corporation, et al., Defendants *

NOTICE OF CLASS ACTION

To: Past or present mortgagors of First Federal of Alabama, Inc.

Your rights may be affected by a lawsuit pending in this Court, Civil Action Number CV 91-724.

The Plaintiffs in this action charge that First Federal of Alabama, Inc., and its affiliates have committed fraud, suppression of the truth, deceit and breach of contract with respect to persons or entities who have executed mortgages with First Federal of Ala., Inc. and its affiliates. These include allegations that the Defendants wrongfully added insurance and taxes to the principal balance of the mortages of Class Members, and charged interest thereon, thereby increasing the mortgage balance and making it impossible for the mortgages to amortize pursuant to the original agreement. These allegations also include charges that the defendants added to the mortgage balance late charges and interest thereby increasing the mortgage balances and making it impossible for the mortage loans to amortize over the normal period of the mortgages. Plaintiff seek to recover the amount of over payments made by the Class Members as well as punitive damages.

The Defendant disputes these claims and contends that its conduct has been lawful in all respect. (C 444) (The out of court settlement including attorney fees was closed to $4,000,000.00)

Recent Revelation: Atty. Jackson represented FF in the Suit above. Please note the many acts in this writ which parallel the acts above sanction at the least, if not directed by him; so what, deny/dispute.

Dear Judge: . Mr. Darnell has filed a pleading and in that pleading is contained a request to meet with the court. First Feder-al would welcome an opportunity to sit down at a settlement conference with the court and Mr. Darnell. I am, by copy of this letter, notifying Mr. Darnell of our willingness to do so.

Very Truly Yours, ... (Atty.) Edward R. Jackson

Petitioner twice Requested Production from **FF:** (never received)
(a) the amount of Fidelity Insurance the Respondents carried, for he could present a more reasonable and just settlement offer; but, it apparently wasn't allowed. (2nd request was 4/20/96)
(b) All correspondence relative to Petitioner's Complaint sent to OTS and all correspondence received from OTS and a brief on the oral communications not in writing. (Requested 3/7/96 & 4/20/96)

Petitioner requested (b) from OTS 11/18/96 received 2/22/97. Circuit Court rendered it's decision 1/6/97; thus, another material Fraud & Deceit was discovered as of 2/22/97. [I]f this Honorable Court was compelled to bet their homes on whether the above was coincidentally done or **purposefully done**; 10 to 1, each take bold.

Attorney Jackson stated to Petitioner in the Courthouse, that if, you wanted to settle in the $200,000.00 range, he was certain that FF was interested; but, if you wanted something like seven digits, it would not be entertained, "I won't allow it." Not realizing the immediate [D]eceit, Petitioner indicated that seven digits under the circumstances were more appropriate; **thus,** voiding a settlement meeting before the Judge and [e]levating the Defendants Racists Acts to more Fabrications, Perjuries and [Fraud on the Court].

Frauds, deceits, misrepresentations, fabrications, perjuries, breach of contracts, libels, conversions, wrongful foreclosures, obstruction of justice, subornation of perjury, violations of: 5th & 14th Amendments; 12 USC Section 1461; & 42 USC Sections

1981, 1983, 1985 & 1986 were all alleged in Circuit Court, plus recusal of the Judge. (Also Move to strike affidavits) **Fraud on Court** to Petitioner's mind frame was properly alleged in first brief to the Alabama Court of Civil Appeals; because, prior to the Circuits decision on 1/6/97 Fraud on the Court had not been **consummated.** Fraud on the Court is justified only by the most egregious misconduct directed to the Court itself, such as fabrication of evidence by a party in which an attorney is implicated. *Copelands Enterprises, Inc. V. CNV, Inc.* 925 F.2d 1563. Atty. Thornley is implicated because he knew that Petitioner had submitted his letter C48-49 as evidence and that FF's Sr. V.P. Gunter and Ret. Sr.V.P. had used material misrepresentations from his letter in their perjured affidavits. Atty. Jackson is implicated from: Ret. Sr.V.P. Shaw's affidavit which is unequivocally known to be both fabricated & perjured; Sr.V.P. Gunter's affidavit is unequivocally known to be both fabricated and perjured, plus she attested to each and every quote submitted by Respondents via affidavits and lastly, she approved the insidious letter by Atty. Thornley and last her signature is on each of the three loans Petitioner made with FF; V.P. Sparks affidavit is unequivocally known to be perjured; where Atty. Jackson purposefully and knowingly submitted fabricated and perjured affidavits to the Court. The Court's acceptance of, and decision from those affidavits, ***Consummates their Fraud on the Court, plus renders their actions as Irrevocable Acts.***

(RECEIVED SEP 11 1995 Consumer Affairs)

Law Offices, Tweedy, Jackson & Beech * Ms. Elena Murphy
Post Office Box 748 * Office of Thrift Supervision
Jasper, Alabama 35502-0748 * Department of the Treasury
(205) 387-2171 Fax (205) 387-2174 * Post Office Box 105217
September 1, 1995 *Atlanta, Georgia 30348-5217

Re: Alfonza Darnell CCR No.: 20037195 Dear Ms. Murphy:

I represent First Federal of Alabama (First Federal). I understand you spoke with Mr. Palmer Bell of this institution on 6/28/95. He asked permission to send a response to the lawsuit, **in lieu of specific responses to the complaint**. I understand you agreed to this. (The Office of Thrift Supervision {OTS}upon accepting that agreement, disgracefully became FF's Atty. passive slave; wherein, they could not honorably carry out it's own agenda in mediating Petitioner's complaint fairly. Their usual time in mediating a case was 30 days, FF bound them, wherein it could easily take up 40 times 30 days (1200 days) or more to reach a decision, it has been over 1030 days thus far. Petitioner unaware of the sell out pushed OTS for an answer and received one dated 6/12/96, 2 days passed a year of the 6/10/95 date of my complaint wherein NONE of the things Petitioner complained about were justly addressed. OTS Determination on CCR # 20037195 parallel their inept act above. Petitioner did ask Respondents on 3/7/96 and 4/20/96 for a copy of all correspondence between them (FF) and OTS. Suppression of truth, deceit, obstruction of justice, plus violations of my 5th, 6th, 9th & 14th Amendment Rights.)

Enclosed, please find a copy of the Complaint filed by Mr. Darnell in this case, and a Motion to Dismiss, which was the initial response filed. You will see the complaint is not dissimilar, although not completely like the letter to you by Mr. Darnell of June 10, 1995. Because of this, I think you would agree it is difficult for me to formulate a response, other than a general denial. To this end, I have filed a Motion for More Definite Statement with the court, which is enclosed for your filed. When we have a more definite statement from Mr. Darnell, I will answer more specifically, and respond to the Office of Thrift Supervision. (Para.) If this is not permissible, please advise immediately, and I will formulate a response for you, consistent with your request, to the extent I am able. Very Truly Yours,

Tweedy, Jackson & Beech, Edward R. Jackson

Home Owner's Loan Act of 1933, 12 USC Section 1461

Sr.V.P. Shaw's son Ronnie appraised my house in the low 50's; using $52,000.00 x 80% = $41,600.00 (at 8% for 30 years = $ 305.26 per month) which would have paid off my personal home and a Rental. The payments on those two loans was $282.78 and $288.90 = $571.68 - $305.26= $ 266.42 monthly savings, plus Petitioner would have had an entire house free to sale, rent or to do whatever, to better himself. This is allowable by the HOL Act.

Respondents eluded that Petitioner wanted an moratorium, that was not the case I wanted real relief (not token relief nor the relief FF suggested and/or committed to) as described above.

(a) Pres. Simmons stated that FF would refinance each loan at an interest rate 5% above that I was currently paying, which was 9%, 9.25% and 11%. That would have been 14, 14.25 & 16%'s. (b) FF also offered me a variable rate loan which could have taken my interest rate as high as 17%. FF (a) or (b) offers = suicide (me) **Each of my loans with FF were to paid off between 9-10 years** (see C 44-46 and C 324)

This is Truly, an Unambiguous Blessed & Elite Prepayment Clause in the Note following: The Mortgage Note states: For Valued Received, We promise to pay First Federal Savings and Loan Association of Jasper, its successors and assigns, at its offices in the City of Jasper, the sum of .... $36,075.00, with interest at the rate of 9.25 per centum per annum payable in monthly payments of .... $330.41 on the 1st day of each and every month commencing August 1, 1977 .... **In the event of any [p]repayment**, this note shall not be treated as in default at any time so long as the unpaid balance of principal, additional advances under this note or the instrument securing the same, and interest (and in such case accruing interest from month to month shall be treated as unpaid principal) is less than the amount that said indebtedness would have been had the monthly pay

been made as first specified above; provided that monthly payments shall be continued in the event of any credit of any proceeds of insurance, condemnation, or partial sale of security.

In *Charnock v. Dieleman*, Fla. App., 421 So.2d 758 case show where he borrowed $35,000.00 for five years contracting to pay $7,000.00 per year plus interest on a certain day each year and that there would be No Prepayment penalties; however, he paid 24,999.75 plus interest after six months, failed to pay $7,000.00 plus interest when the 1st payment was due and even missed the 2nd scheduled payment. Dieleman successfully foreclosed. Petitioner's case is grossly different than Charnock's in that his case, there exist an Unambiguous prepayment clause. This Blessed Clause gave Darnell the right to prepay and to pay anything or nothing so long as he doesn't allow his balance to exceed the balance amount showing on an amortization schedule provided he had paid as first specified. The inverse affect as compared to Charnock. If Charnock had the same clause as was in Petitioner's loan, he could have gone slightly in excess of 2 5/8 years before he had to make [a]nother payment, after his first early payment.

There is absolutely nothing the Respondents can show which would prove that the actions taken in loan 99864-9 were outside the umbrella protection of the aforementioned prepayment clause afforded me through intense negotiations with said First Federal. Those negotiations illuminates from the fact that FF's appraisal of my houses by Sr.V.P. Shaw and approved by Pres. Simmons (C 87-89) 99864-9 => 5/26/76 & 10/30/76 and Loan #1985 12/77 construed with the application for that loan 99864-9 (dated 3/10/77 attached with loan closing papers) shows a definite break in negotiation and reveal just how intense those negotiations were. FF came out with more collateral than was necessary and I came out with ALL the bad parts for me taken out of the prepayment clause in the Note, not realizing it was **my Savior and Lord Jesus**

Christ doing to Bless me twenty years later. Believe it, He's Alive!

Those appraisals show that my Brick Veneer home was appraised for $15.00 per sq. ft. and that a economy siding frame house appraised for $18.00 per sq. ft and gets $1,500.00 credit for site improvements wherein it only have a walkway & no credit to my personal home which had a professionally done driveway and walkway ($0.00 credit); also my house was deducted $2,000.00 for being on a concrete slab - my house has never been on a concrete slab; however, my personal house should have stood alone by itself for a $36,075.00 loan without my parents home, **these acts beyond doubt proves FF's Racism even before the loan was made.**

In *Akins v. Randolph County Bd. of Educ.* 643 So. 2d 995 (Ala. Civ. App. 1994) where it was stated in this Court under Keys 155 181(19) states that, "155 - Ambiguities should be interpreted most strongly against party drawing contract" and 181(19) states, " In action on contract, summary judgment is appropriate only where agreement is unambiguous." Considering a contract drawn by First Federal, duly recorded by F F (remembering the NOTICE TO WORLD in Cooper plus other codes cited) There can be no other interpretation other than the Court has so far considered loan Contract # 99864-9 as being void or ambiguous **and when construed with** *Gray v. Reynolds* 514 So. 2d 973 (Ala. 1987) The Supreme Court held: "Where contract from its terms, is plain and free of ambiguity, it must be enforced as written." **Regardless of what interpretation was given by the Ala. Supreme & Appellate Courts, it [d]efies their prior precedent decisions.**

"MORTAGE DEED vol. 1106 page 12 Know all men by these presents: That the undersigned Alfonza Darnell and wife Carlen Darnell; Shelby Darnell and wife Ghema Darnell (hereinafter called the Mortgagors) has this day become justly indebted to the First Federal Savings and Loan Association of

Jasper (hereinafter called the Mortgagee) in the principal sum of ... $36,075.00 evidenced by one promissory note of even date herewith, bearing interest from the date and at the rate therein provided and which **said indebtedness is payable in the manner as provided in said note** , the said note forming a part of this instrument,..." (Beside giving an mortgage on my new home, my parents gave a third mortgage on their home for me to borrow $36,075.00. (Alabama Code Sections: 8-9-2; and cumulative 35-4-50, 51, 62 & 63 should have prohibited what happen to Petitioner, that is Wrongful Foreclosure based on $30,875.00. 17 Am Jur 2d at **Contracts Sections** 218 **Unilateral mistake or error; where unknown to other party.** In essence states, that if an error was made by the drawer of a contract, unknown to the other party, and it will not seriously hurt the drawer, and contract is not ambiguous the party not in error may enforce it **Section** 520 " To be effective as a modification, the new agreement must possess all the elements necessary to form a contract. A modification of a contract requires the assent of both, or all, parties to the contract. ....One receiving an offer to change a contract to which he is a party is held to be under no obligation to answer it; . (Court, what makes their word better than Petitioner's and his mother's word?)

In *O'Barr v. Oberlander* 679 So .2d 261 (Ala. Civ. App. 1996) & same ruling *Hose v. Winn Dixie* Court stated, "In motion for Summary Judgment, in deciding whether there is a genuine issue of material fact, court views evidence in light most favorable to nonmovant and resolves [a]ll reasonable doubts against movant. Rules of Civ. Proc., Rule 56." This rule was grossly misapplied in Petitioner's case.

Ala. Code 8-9-2 The Supreme Court stated in , *Arndt v. City of B'ham* 547 So.2d 397 "Any Contract required by statue of frauds to be in writing cannot be modified by subsequent oral agreement." It also stated in this case and in *Gilmore v. Shell Oil Co.* 613 So.2d 969, "Mere speculation that an issue of fact exists is not enough to

defeat a Summary Judgment Motion, nor may the opposing party rest upon mere conclusory allegations to prove that a genuine issue of fact exists." Our Appellate and Supreme Court has thus inferred to have abolished all of the above laws which was theoretically established by them as a pattern for our lawyers and/or litigants to follow; However, both Appellate & Supreme Court refuse to place this case in the Law Books stating it will serve as No Precedent. (I disagree and Most Vehemently alleged that NONE of the aforementioned Laws has been abolished, yet Pride, Power, Politic and Racism abode in Alabama; and it is certainly not sleep in the Ala. Legal Profession nor it's Judiciary.)

The Alabama Courts and/or First Fed. violated my Civil Rights. Where are my rights when the Judiciary turns on & off Ala. Code laws and their precedent case laws to protect the sanctity of White White Collar Pride, Exposure to Racism and the Legal Profession.

INTERROGATIVES to First Federal & Atty. Thornley #1 & #2 for each were the same.

1. What information was used to determine Plaintiff was in default and identify who provided it on each loan you foreclosed and/or attempted to foreclose? (C93 & 97)

F F : This information is computer generated. (C 142)

(a) Provide each document used for that purpose. (C93 & 97)

FF: The loan history information is being provided to the Plaintiff in response to Plaintiff's request for production of documents. (C142)

(b) Identify each person involved. (C93 & 97)

FF: The information is obtained from computer. (C 142)

(c) Identify with specificity who ultimately made the decision.

FF: No specific individual. (C 142)

2. Identify each person who decided to Foreclose Plaintiff's Loans. Separate identities to each loan by reference to loan # (C 93 & 97)

FF: Mary Jo Gunter, Al Simmons, or Brent Thornley. (C 142)

3. Give and identify each document given you by First Federal wherein you made a decision to foreclose and/or attempt foreclosure on each of the Plaintiff's properties. Correlate loan account numbers with each with complete specificity. **(C 93) Atty. Thornley: The decision to foreclose had already been made when First Federal [C]ONTACTED me to do the foreclosure proceedings.** (C 140) Note!! Right Now, Atty. Thornley's answers to #1 & #2 are mute and Sr. VP Gunter & Chairman Simmons decided to Foreclose my properties + the answers given by First Federal in #1 & #2 Proves that they Foreclosed without Considering the Mortgage Note.

4. Identify each and every person whom were aware of given copies of and had input into the two letters you wrote to Plaintiff dated 8/19/94 and 9/14/94 respectively. (C 93)

(a) Of these people above who was the boss over the ultimate decision to send those letters to the Plaintiff. Give their bosses up to the ultimate boss. (C 93)

(b) Explain with exact and precise specificity [w]hy so many misrepresentations were made in those letters. (C 93; C 140) **Atty. Thornley: Objection is made to the disclosure of any other individuals and/or information to this question as such question seeks information protected by the attorney/client privilege and/or information formulated in anticipation of litigation.** (This answer is tantamount to one taking the 5th when they know they are guilty.

5. Identify each person who told the Morgans they didn't have to pay $214.00 monthly.
(a) Identify who gave the order. (b) Identify each person
(c) Specify how many times a lesser than $214.00 payment was accepted. **FF: (a) unknown (b) unknown (c) See loan history** Regardless FF can't deny interfering with my loan & Const. Rights

6. Identify who allowed the Morgans to assume the loan in your favor for the house they moved into after leaving house bearing loan number 0100001985. (C 97)

FF: Unknown. (a) This was allowed by another banking institute. (C 142) (FF is responsible for taking away my mortgagors for their own pecuniary gain. FF [c]ontract had measures which could severely hurt me if I weakened their mortgage; now, FF with impunity, totally zaps my mortgagors and income and placed my family in jeopardy, violating my rights to equal protection and other civil rights via its own illegal acts.

"**WARRANTY DEED** Vol. 1205 Page 510 ..... As part of the consideration herein the grantees herein agree to assume and pay the unpaid balance of that certain mortgage in favor of First Federal Savings and Loan Association of Jasper, dated April, 1981, and recorded in Volume 1181, Page 518, which mortgage was assigned to central Bank of Birmingham as Trustee and recorded in Volume 1176, Page 459, in the Probate Office of Walker County, Alabama. Sales price of the property is exactly $57,000.00 of which $53,315.82 is represented by the assumption of the hereinabove described mortgage loan." (C 65 or 66)

8. Identify each person who gave orders to Attorney Thornley and/or the law firm Maddox, MacLaurin, Nicholson & Thornley relative to each of the plaintiff's loans.

FF: Same idividuals identified in answer to question number 2 above. (Chairman Simmons and Sr.V.P. Gunter)

(a) Also identify each document and oral and otherwise order given him/them relative to the letters dated 8/19/94 and 9/14/94 from their firm, sent to Plaintiff. Use the utmost specificity.

FF: Loan history, loan expense account sheet, and unknown as to any other specific documents at this time.

Darnell stated in the Circuit Court that he was deprived of his property and liberty by the Defendants, without cause, due process nor equal protection of the law (C 168 at #5). The Defendants reply (C 193 at #1) was, "Defendants deny the allegation of violation of Plaintiff's 5th and 14th Amendment Rights under the United States Constitution and demand strict proof thereof."

Credit Report from Credit Union after requesting about 15 times

Firm/ID	**Code**	**Reported**	**Opnd**	**H/C**	**Trm**	**Acct. #**
1st Fed Al	409FS279	11/89	Foreclosure		20850100	**99864-9**
same		"	Process		2085010000	**9446**
"		"	Started		2085010000	**1985**

"		12/94	3/78	6425	$187	1000019850378

Charged Off Account.....Consumer disputes this account

"	"	6/77	F P S		2085010099

Report (#1) Consumer dispute this account

"	"	1/83	F P S		2085010000

Credit Bureau of Huntsville (2 reports, 2nd for Am South Bank)

Acct.#		Reported	Last Activity	Open	High Cr	Bal	Paymt
9446		12/94	1/89	1/83	25,000	-0-	Paid
99864-9		12/94	1/89	6/77	36,075	-0-	Paid
1985	**(#2)**	12/94	12/94	3/78	20,820	6475	$187

(I stopped paying 12/95; **I had only 1 acct. with #1985 in it, 3/78**)

1985	1/95	N/A	3/78	6425	-0-	Paid

FF gave this to the Credit Bureau, which Proves my points.

12/94 to 6/95 is well within 2 year Statues Of Limitation for Libel!

C 71 show Loan (#1985) Type - Charge Off as of 4/27/95 and late charges of $60.60. L H Records show this was charged-off 9/28/92 in the amount of $9,535.99. Amortization schedule show as of 9/92 the balance should have been $9,834.41 (Not in any default). However, it must be clear that this loan was paid off at

foreclosure sale 6/20/89; but being Black & in the City of Jasper, I began to pay on loan out of fear of losing house in such a prejudice city. **Causal Connection** between Respondents, City of Jasper and Deep Rooted Racism.

Jasper Police Department (JPD) denied me a job in the 70's claiming I was plotting to kill policemen, bootlegging, collecting monies, troublemaker, part of a liberation movement, etc.; 2 Black police officers stated some of the above, one wrote letter denying & denied this also to EEOC, the other one later was hired to help administer a Rehab program; wherein the City qualified for this using only my properties, except 1 house each belonging to my mother & sister. After participating you should have been guaranteed Rentals for 5 years cooperating through Jasper Housing (JHA) Authority. JHA caused one tenant to leave from this program and did not give me anyone else, another tenant (Sec.8) not in that program left my house and went back to the Projects without me having done anything wrong; (similarity to FF taking my mortgagors & allowing them to buy FF's house) wherein, I lost $750.00 per month income (had lost underground coalmining job about 11/2 years ago) but still had to pay $475.64 per month on those two houses to FF. When attempting to sue FF in Fed. Ct. 1989 for Racial Discrimination & Violation of the Homeowner's Loan Act - I didn't realize the frauds at that time. One thing brought up was why FF knew so much about my personal business (C__) JHA Section 8 Director is/was married to FF V.P., C.Ray Fowler. The City of Jasper is/was 1 of 5 cities in the U.S. which have more millionaires per population count. State Senator Davidson Slavery Remarks, plus Ex Congressman Tom Bevill Most Plausible Cover-up Response utterly deceiving the nation as to Jasper not being a racist City. Note! I went to 20 City leaders and I ask Congressman Bevill over 3 times for help against JPD without success; yes, 1987 U.S. Supreme Court records can substantiate these facts. The Fed. Dist.Ct. stated that the City of Jasper (and its officers, agents,

and employees) is further permanently Enjoined and Restrained from retaliating in any manner against me. Six jobs around 12/89 came open for Teacher Aides, my wife #1 in her major/class at Ala. A&M Univ. and I an honor student my last two years at Tuskegee Institute did not get one of those six jobs which would have allowed us to keep our properties, as Pres. Simmons stated FF did not have to make an Homeowner's Loan Act loan if I had no job. Natalie's 1st year in school, her class mates couldn't touch her academic ability with a 10' pole, she went on to visit Pres. Clinton, General Colin Powell and NASA's Director Goldin, she is currently a sophomore at Spelman College in Atlanta. Each of our six children has made gifted class program, considering a racist City (KKK) it was not just FF trying to hurt me; (The City Power structure resorted to illegal acts also, to hurt me - I moved my family to Huntsville in 1989) but, they were the one's who hurt me the worst. The evidence of their insidious acts is in writing and its Irrevocable Fraud on the Court will be exposed; thus, FF [m]ust succumb to Justice.

The loan (closed 6/16/77) history (LH) shows the following: that FF placed $36,075.00 in acct. # 99864-9 on 6/23/77 after 3 day right of rescission was up; 6/28/77 it shows that the acct. was credited $5,200.00 to hopefully keep me from buiding another house; it shows that from 1/21/83 - 12/23/83 Petitioner paid the equivalent of 15.42 payments; it shows pymt.'s on 11/1 & 15/83 that it covered 1983 pymt.'s; pymt.'s on 12/ 9 & 23/83 was credited for pymt.'s for 1/84 & 2/84; it shows 1/16/84 FF illegally moved those 2 pymt.'s; going back to 4/1/83 FF unbeknown to me took $200.00 from my prin. bal.; back to 2/6/84 FF sent me a delinquent notice letter stating I was behind, after I had made the equivalence of 15.42 pymt.'s in 1983 and I wasn't behind at the beginning of 1983; in 1984 I was wrongfully charged aprox. 11 late charges wherein if you incorrectly went by the loan FF claim they made of

$30,875.00 they stole Petitioner's money - but, we must stick to what's proper that is a loan based on $36,075.00 wherein [e]ach and every late charge made to this Petitioner on either loan #1985 or #99864-9 it was wrong or better put an act of conversion by FF. These are the facts and there is simply No Defense for the Truth, and my Lord saith, (a) "I am the Truth" (b) "And ye shall know the truth, and the truth shall set you free."

Conclusion

Petitioner shall rest his case relying on the contents of his entire writ in booklet form and two quotes. In the case of *Oden v Pepsi Cola Bottling Co.* 621 So.2d 953 (Ala. 1993) the Supreme Court quoted in *Hinkle v. Railway Express Agency*, 242 Ala. 374 6 So.2d 417 (1942), this court held that, "A person cannot maintain a cause of action (view also from the reciprocal or defense) if, in order to established it, the entity must rely in whole or part on an illegal or immoral act or transaction to which it is a party." First Federal's refusal to give Petitioner $5,200.00 because he might start building another house.

The Ala. Supreme Court in Sullivan, Long and Hagerty v. Southern Electric Generating Co. 667 So.2d 722 (1995) held that, "Supreme Court will not consider part of agreement to be meaningless where language of parts may be construed to give effect to each." Now consider the Blessed Prepayment clause in loan # 99864-9, it does the above.

For the reasons stated, it is respectfully submitted that the petition for a writ of Certiorari should be granted.

Humbly submitted by: Alfonza Darnell ; 3313 McDow Ave. N.W. (256) 536-2838 Alfonza Darnell Huntsville, Al. 35816

ALFONZA DARNELL, IN THE CIRCUIT COURT OF

PLAINTIFF, WALKER COUNTY, ALABAMA

VS.

FIRST FEDERAL OF ALABAMA,

DEFENDANT. CASE NO.: CV-95-342

SUMMARY JUDGEMENT

The plantiff having filed a Motion for Summary Judgement in the above-styled case on March 3, 1996, and the defendants also having filed a Motion for Summary Judgement in the above-styled case on April 18, 1996 and said Motions having been continued for a period of time; came on to be heard on the Court's Motion Docket of December 4, 1996, and said Motions having been submitted upon the Motion, pleadings, affidavits, exhibits and arguments of the plaintiff, pro se, and the Motion, pleadings, affidavits, exhibits and having read the Motions, pleadings, affidavits, exhibits, and having heard the arguments of all the parties herein, the Court is of the opinion that plaintiff's Motion for Summary Judgement should be denied, and that the defendants Motion for Summary Judgement should be granted as to all claims and as to all parties herein, and upon consideration thereof;

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THIS COURT AS FOLLOWS:

1. That pursuant to Rule 56 of the Alabama Rules of Civil Procedure, as ammended, Motion for Summary Judgement, heretofore filed in this case on behalf of plaintiff, be and the same is hereby denied.

2. That pursuant to Rule 56 of the Alabama Rules of Civil Procedure, as amended, that Summary Judgement be and the same is hereby granted in favor of all defendants in this case as to all claims of plaintiff, and there being no just reason for delay, this Court grants Final Summary Judgement pursuant to Rule 54 (b) of the Alabama Rules of Civil Procedure for all defendants herein as to all claims filed in this case by plaintiff, and this case be and the same is hereby dismissed with prejudice.

3. That all costs of Court incurred herein be and the same are hereby taxed against the plaintiff.

DONE AND ORDERED this the 6th day of January, 1997.

Hugh Beaird (sign/seal)

CIRCUIT JUDGE

cc:
A. Darnell
E. Jackson
E. Sanders

Filed 1997 JAN-6 PM 4:07
Vinita Thompson, CIRCUIT
CLERK, WALKER COUNTY, AL

App. 3

STATE OF ALABAMA --- JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
SPECIAL TERM, 1997

2960713

Alfonza Darnell v. First Federal of Alabama, FSB, and the law firm of Maddox, MacLaurin, Nicholson & Thornley
Appeal from Walker County Circuit Court (CV-95-342)

Wright, Retired Appellate Judge

Affirmed. NO OPINION.

See Rule 53 (a) (1) and (a) (2) (F), Alabama Rules of Appellate Procedure. This case is before this court pursuant to Section 12-2-7 (6), Ala. Code 1975.

All the Judges concur.

John H. Wilkerson, Jr. Clerk of the Court of Civil Appeals of Alabama, do hereby certify the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 29th day of August, 1997.
sign/seal Clerk, Court of Civil Appeals of Alabama

RULE 53. OPINIONS AND "NO OPINION" CASES OF THE SUPREME COURT AND THE COURT OF CIVIL APPEALS. (O'K IF DETERMINED)
(1) THAT AN OPINION IN THE CASE WOULD SERVE NO SIGNIFICANT PRECEDENTIAL PURPOSE; AND
(2) THAT ONE OF THE FOLLOWING CIRCUMSTANCES EXISTS:
(f) THE COURT, AFTER A REVIEW OF THE RECORD AND THE CONTENTIONS OF THE PARTIES, CONCLUDES THAT THE JUDGMENT OR ORDER WAS ENTERED WITHOUT AN ERROR OF LAW.

App. 4 (same court) October 3, 1997

Application for Rehearing Overruled and 39(k) Motion Denied.

App. 5

IN THE SUPREME COURT OF ALABAMA

January 16, 1998

1970117

Ex parte Alfonza Darnell, PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Alfonza Darnell v. First Federal of Alabama, et al.) (2960713) (Walker: CV-95-342)

CERTIFICATE OF JUDGMENT
Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

Maddox, J - Hooper, CJ., Shores, Kennedy and Butts, JJ concur.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.
Witness my hand this 16 day of Jan. , 1998
sign/seal
Clerk, Supreme Court of Alabama

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment 5

Due Process of Law (....[Paragraph] & .... [Para] and)

The statement that no person shall be deprived of life, liberty, or property "without due process of law" expresses one of the most important rules of the constitution.

Amendment 6
Rights to a fair trial

Amendment 7
Rights in civil cases

Amendment 9
Rights retained by the People

The enumeration in the Constitution, of certain rights, shall be construed to deny or disparage others retained by the people.

Some people feared that the listing of some rights in the Bill of rights would be interpreted to mean that other rights not listed were not protected. This amendment was adopted to prevent such interpretation.

Amendment 14
Civil Rights

This amendment was proposed on June 13, 1866, and ratified on July 9, 1868. ***Section 1.*** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life , liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

6 Alabama Codes & 5 Federal Codes

1. (Statue of Frauds) "**Section 8-9-2. Certain agreements void unless in writing.** In the following cases, every agreement is void unless such agreement or some note or memorandum thereof expressing the consideration is in writing and suscribed by the party to be charged therewith or some other person by him thereunto lawfully authorized in writing;

(1) Every agreement which, by it's terms, is not to be performed within one year from the making thereof;

(2) ..... (3) Every special promise to answer for the debt, default, or miscarriage of another;

(4) ..... (5) Every contract for the sale of lands, tenements or heriditaments, or of any interest therein .....".

2. "**Section 35-4-50. Conveyances required to be recorded in office of probate judge.** Conveyances of property, required by law to be recorded, must be recorded in the office of the judge of

probate."

3. "**Section 35-4-51. What instruments admitted to record; filing as notice of contents; section cumulative.** Except as may be otherwise provided by the Uniform Commercial Code, all deeds, mortgages, deeds of trust, bills of sale, contracts or other documents purporting to convey any right, title, easement, or interest in any real estate or personal property and all assignments of mortgages, deeds of trust or other securities for debt or extension agreements with respect thereto, when executed in accordance with law, shall be admitted to record in the office of the probate judge of any county. Their filing for registration shall constitute notice of their contents."

Filing a deed for registration constituted notice to all the world. Cooper v Cooper 273 Ala. 694, 144 So. 2d 62 (1962).

4. **Section 35-4-62. Conveyances recorded in county where property situated.** Conveyances of real property must be recorded in the county in which such property is situated. ...

5. **Section 35-4-63. Recording effective as notice of contents of conveyance.** The recording in the proper office of any conveyance of property or other instrument which may be legally admitted to re-cord operates as a notice of the contents of such conveyance instrument without any acknowledgement or probate thereof as required by law. ....

6. **Representing a Client Within the Bounds of the Law. = Disciplinary Rule 7-102 (Pertinent Parts)**

(A) In his representation of a client, a lawyer shall not:

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal

(4) Knowingly use perjured testimony or false evidence;

(5) Knowingly make a false statement of law or fact

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false;

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent;

(8) Knowingly engage in other illegal conduct or conduct contrary to a DR;

1. **Home Owner's Loan Act of 1933, 12 USCS Section 1461**

(See this writ at and C 59-60)

The primary purpose of the Homeowner's Loan Act was to afford home owners in distress a means of refinancing their home mortgages on longer terms and at lower rates of interest,

and it was not designed to grant a moratorium on home mortgages or to provide a means of escape from paying them. Home Owners' Loan Act of 1933, section 1 et seq., 12 U.S.C.A. Section 1461 et seq. and notes."

42 USCS Sections 1981 Equal Rights Under the Law All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by White citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 USCS Section 1983. Civil action for deprivation of rights Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statue of the District of Columbia.

42 USC Section 1985. Conspiracy to interfere with civil rights

(1) ... (2) Obstructing justice; .....or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing or

attempting to enforce, the right of any person, or any class of persons, to the equal protection of the laws;

(3) Depriving persons of rights and privileges. If two or more persons in any State or Territory conspire, ...for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; .....; in any case of conspiracy;

.....

..... set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages; occasioned by such injury or deprivation, against any one or more of the conspirators.

42 USCS Section 1986. Action for neglect to prevent conspiracy Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USCS Sect. 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, ... for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action

.....

KEYS TO UNDERSTANDING THIS PETITION

1. Petitioner = Alfonza Darnell, me, I
2. FF = First Federal of Alabama, formerly First Federal Savings & Loan Association, Respondents, later changed to Pinnacle Bank
3. Sr. VP/ V.P. (Vernon) Shaw, Senior Vice President, employee
4. Ret. Sr.VP/V.P. Shaw = Retired = non-employee of FF
5. Sr. VP Gunter = Senior Vice President, Mary Jo (Bame) Gunter, signed each of the three loans Petitioner had with FF
6. Chairman Simmons = Chairman of the Board of Trustees, ExPresident, Al Simmons
7. Atty. Thornley = FF's Attorney Brent Thornley,
8. Atty. Jackson = FF's Attorney Edward R. Jackson; Notary
9. OTS = Office of Thrift Supervision, Federal Regulator of Savings & Loans (S&L's)
10. FDIC = Federal Deposit of Insurance Corporation, Federal Regulators of Banks
11. VP Sparks = Vice President Carmen Sparks, Custodian of FF's Loan Histories
12. LEA = Loan Expense Account, Shaw was the Custodian of the LEA's also
13. C = Clerk's Record, C 1- 458
14. C 48-49 Most Insidious Letter written by Atty. Thornley, possibly co-authored with Chairman Simmons and Sr. VP Gunter or at the least, they fully approved it.
15. C 1- 99 Allegations, Complaint & Exhibits filed originally with Law Suit 6/19/95 and given to the Defendants the very same day.
16. C 452 my mother's affidavit